

### REMARKS

This is a full and timely response to the Office Action of September 19, 2007. By the present Amendment, claims 1, 10, 19, 21, 23 and 30 have been amended to more particularly and distinctly point out the subject matter of the present invention. Reconsideration and allowance of the application and all presently pending claims are respectfully requested.

### Response to 35 USC § 103 rejections

On pages 2 through 12 of the Office Action, the Examiner has rejected claims 1-4, 7-9, 10-13, 16-18, 19-26 and 28-31 under 35 USC § 103(a) based on "*MERS aids electronic mortgage program*," Mortgage Electronic Registration Systems Inc., Mortgage Bankers Association of America, January 1997, No. 4, Vol. 57, p. 42 (hereinafter Mortgage Bankers), in view of MERS® Integration Handbook, Vol. II, Version 11.0, May 19, 2002 (hereinafter MERS® Integration Handbook). The Examiner has further rejected claims 5-6, 14-15 and 27 under 35 USC § 103(a) as being unpatentable over Mortgage Bankers in view of MERS® Integration Handbook and further in view of U.S. Patent Application Publication No. 2002/0107703 to Feinberg et al. (hereinafter "Feinberg"). Based on the above amendments and the present remarks, Applicant submits that these rejections have been traversed.

### The present invention

As described in the specification for the present application, the present invention provides in part a release tracking system that not only receives, stores and manages information relating to multiple real estate liens, title and financial transactions in multiple jurisdictions, but also tracks note

payoffs and whether liens have been timely released to provide a variety of benefits to numerous parties. Lenders, borrowers, buyers, settlement agents and title insurers alike all benefit as a result. By tracking, reporting and preparing documents to facilitate lien release, the present invention facilitates the removal of liens recorded against a borrower's property and the recordation of liens against the buyer's property. For a settlement agent, the present invention assists in post-closing processing of lien releases and recordations so that the settlement agent can safely close his or her files.

It will be appreciated that the present invention does not merely assist in creating a lien or updating a lien record when a lien has been released. Further, the present invention does not merely assist in the tracking of notes underlying the liens. As described in the specification of the present application, there are two very different documents associated with the real estate transactions contemplated as part of the present invention. There are liens (also called deeds of trust) which are typically recorded with the court house in the jurisdiction in which the property lies, and there are notes, which are the paper documents underlying the lien that can be bought, sold, transferred, securitized and so forth in accordance with market custom. Banks that underwrite mortgage loans try to reduce their costs of managing the notes, and will typically have an internal or external reconveyance department for this purpose. Servicing agencies can also be employed on behalf of note holders to assist with re-payment and enforcement of note terms. Importantly, these types of services pertaining to the notes correspond to enforcement *against the obligor* (i.e., the borrower of funds) and not the lender. Further, while notes can be tracked to determine who ultimately holds a note at the time a payoff is to occur, the note tracking entities consider their task finished once the current note holder is identified.

By contrast, the present invention as claimed pertains to what happens *after* the note has been satisfied and a lien not released (i.e., the note holder is identified, and the note is paid off by or on behalf of the borrower such that the note holder is no longer owed any monies). It is at this stage that the lien must be released so that the new and proper title can be correctly recorded. In focusing on these aspects, the present invention is not concerned with enforcing against the obligor on behalf of the lender. Rather, the present invention is concerned with enforcing *against the lender on behalf of the obligor*, settlement agencies and title insurers, for example.

Consistent with these aspects of the present invention, claim 1 has been amended to recite that the method claimed therein for managing lien releases includes the steps of identifying at least one lien where a note underlying the lien has been satisfied, and identifying whether the lien is due for release. Support for this claim amendment can be found, for example, on pages 1-2, 7-9, 21-23 and 27-30 of the specification as filed, and associated drawing figures. No new matter is believed to have been added.

#### The MERS references

The MERS reference pertains to a lien information management system directed to the basic components of the lien and release preparation and recordation processes. MERS is essentially a central electronic loan registry designed to provide a mechanism for interested parties to identify the holder of the note at the time of payoff. MERS partners with banks/lenders, so it would be counter to their business practices to assist in enforcements against lenders as facilitated by the present invention.

To give context to the MERS references cited by the Examiner, Applicant has submitted two documents herewith in connection with an information disclosure statement. Pertinent excerpts from these documents are attached to this response. The first document, MERS Procedures Manual dated November 2002 (hereinafter "MERS Procedures Manual"), indicates the procedures that MERS follows when a loan is considered paid in full. As shown on pages 89-90 of the MERS Procedures Manual (copies attached), it is the Servicer or Subservicer that processes a "deactivation" of a loan indicating that it has been paid in full. An investor can also confirm that the loan has been paid in full. Then, the Servicer or Subservicer prepares the lien release. It is important to note that MERS is not handling, reporting, determining or otherwise manipulating any information in this exercise. Thus, MERS relies on outside notifications and does not identify a lien where a note underlying the lien has been satisfied. Nor does MERS identify whether the lien is due for release as claimed in amended claim 1. MERS teaches away from these steps because MERS is essentially a listed mortgagee (like a lender) and relies on outside parties for notifications pertaining to note satisfaction and lien releases.

The second MERS document, MERSCORP, Inc. Rules of Membership, July 2006 version (hereinafter, "MERS Rules of Membership"), confirms MERS' operations with regard to notes that are paid in full and the release of related liens. As noted on pages 13-14 of MERS Rules of Membership (copy attached), in Section 8, the Member gives notice to MERS that the loan has been paid in full. While MERS gives notice to all Members shown in its system as having interests in the mortgage loan, *it is the Member servicing the mortgage loan who is responsible to deliver an instrument of satisfaction or release.* Thus, MERS does not identify a

lien where a note underlying the lien has been satisfied. Nor does MERS identify whether the lien is due for release as claimed in amended claims 1 and 10.

Further, MERS does not determine whether a lien is due for release as a result of a note underlying the lien having been satisfied as claimed in amended claims 19 and 21. Further, MERS does not provide a user interface for requesting a determination as to whether the at least one lien has been released where a note underlying the at least one lien has been satisfied, as claimed in amended claims 23 and 30. Again, such efforts would run counter to MERS' business interests, because these efforts facilitate enforcement *against* lenders – the very entities who are MERS' business partners.

The above discussion is entirely consistent with the Examiner's own citations to the two MERS references. For example, in the citation to the quote from Mortgage Bankers on page 3 of the Office Action ("He notes that all parties will more easily be able to track loans to ensure that contractual obligations are being met"), the reference is to *contractual* obligations and not *statutory* obligations. Real property loan agreements will not include an obligation on the part of the lender to release a lien within a period of time after the underlying note is paid – this is a *statutory* requirement. Hence, the Mortgage Bankers citation only confirms MERS' role and lack of relevance to the invention as presently claimed. Further in the same citation on page 3 of the Office Action, the quote "Until then, they are hoping that MERS will enforce lien-release requirements" is vague, future-directed and un-instructive. Regardless of what was meant by the quoted statement, the MERS Rules of Membership clearly indicate that MERS does not

determine whether a lien is due for release as a result of a note underlying the lien having been satisfied.

#### The Feinberg reference

The Feinberg reference is directly related to the outsourced process of creating and releasing a lien that is the responsibility of the creditor (or lender). It describes a medical lien recordation and post-payment release recordation process (see paragraphs [0011-0016] wherein the lien release is prepared and recorded once the lien holder has been paid [0016]. The Feinberg system does not address the situation in the real estate context where there is a settlement agent without authority to release a lien on behalf of a payoff lender. Accordingly, Feinberg is noticeably void of any discussion of tracking a lien release, determining whether the lien has been released according to a trigger date determined based on a settlement date, determining that the lien has not been released and is due for release and sending a signal as claimed in amended claim 1. There is simply no discussion, mention or teaching of such actions, and Feinberg obviously did not contemplate such actions because the Feinberg reference is directed to medical liens and to a lesser extent, construction liens.

The prior art must show *all* claim elements in order to find anticipation or obviousness, and *all* words in a claim must be considered in judging the patentability of that claim against the prior art (see *Manual of Patent Examining Procedure (MPEP)* §§ 706.02(j) and 2143.03). For at least the above reasons, Applicant respectfully submits that the person of ordinary skill in the art at the time of applicant's invention would not have found the invention as presently claimed obvious in light of the various MERS references, the Feinberg reference or any other references of record.

There is no teaching, suggestion or motivation to combine the prior art references in any manner to reach the invention as presently claimed in independent claims 1, 10, 19, 21, 23 or 30.

Applicant further submits that each of the dependent claims is similarly allowable as being dependent from an allowable independent claim.

For the above reasons, Applicant respectfully submits that the rejections in the Office Action of September 19, 2007 have been traversed.

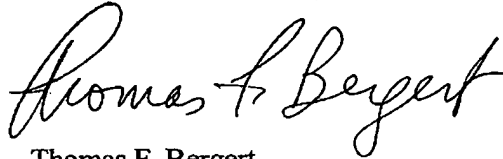
## **CONCLUSION**

Based on the foregoing, Applicant submits that the present application is in position for prompt adjudication and allowance. Applicant believes that all of the claims currently pending in the present application are now in condition for allowance, and an early notice to that effect is earnestly solicited.

Should there be any outstanding issues requiring discussion that would further the prosecution and allowance of the present application, the Examiner is invited to contact Applicant's undersigned representative at the address and phone number provided below.

A petition for three-month extension of time is accompanying this response. The Commissioner is hereby authorized to charge Deposit Account No. 50-0766 in payment of the required fees, with the exception of the issue fee.

Respectfully submitted,  
WILLIAMS MULLEN, PC



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Filed: March 19, 2008

Attached: petition for 3-month extension of time  
pp. 89-90 of MERS Procedures Manual (cited in accompanying IDS)  
pp. 13-14 of MERS Rules of Membership (cited in accompanying IDS)

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**Attachments to Response Dated March 19, 2008**



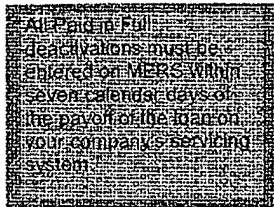
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## Procedures Manual

Version 10.0  
November 18, 2002



## Paid in Full



### Overview

A Paid in Full deactivation is used to deactivate loans when the Servicer accepts payoff funds. This includes short sales, deeds-in-lieu, and charge-offs not associated with a foreclosure completion.

When the Servicer deactivates a loan, its status changes to inactive, and the current date is set as the deactivation date. Loans, which are paid in full, cannot be reactivated and only loans, which are paid in full but have not been confirmed by the investor (if required) can be reversed.

### Impact

This process affects the following types of organizations:

- Servicers
- Subservicers
- Investors
- Associated Members



### Business Procedure—Paid in Full

1. The Servicer or Subservicer receives payment in full.
2. The Servicer or Subservicer processes a deactivation on the MERS® System indicating the loan has been paid in full.
3. If the Investor Member Information indicates, the investor confirms the deactivation of the loan on the MERS® System to allow the loan to be archived.
4. The paid in full deactivation appears on the MIN-level milestones.
5. The Servicer or Subservicer prepares the lien release.
6. Mortgage Electronic Registrations Systems, Inc. must be named as the current mortgagee on the lien release documents. The MIN and SIS telephone number must be included on the documents as described in the *Quality Assurance Procedures Manual*.

7. The MERS member may, at its option, update the MERS® System with the date that the lien release documents were sent to the recorder.
8. If applicable, the member is also responsible for notifying MERS that a mortgage previously reported as paid in full has not been paid in full by performing a reversal on the MERS® System.

## **MIN Archival**

Once the paid in full has been completed, the MIN may be accessed on the MERS® System for sixteen (16) months from the deactivation process date. After that time, those MINs are archived. Members receive notification before those MINs are purged from the MERS® System. The MIN is archived on the first Sunday of the month, after the sixteen (16) months timeframe has elapsed.

After the archival process completes, members may still access some information on the loan through the MERS SIS. The MIN, borrower SSN, deactivation date, Servicer name, Servicer primary customer contact and telephone number, Servicer city and state will be retained on the MERS SIS. However, the MIN information and milestones are not available through the MIN information screen online.



**MERSCORP, INC.  
RULES OF MEMBERSHIP**

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*Section 6.* MERS shall at all times comply with the instructions of the holder of mortgage loan promissory notes. In the absence of contrary instructions from the beneficial owner, MERS and Mortgage Electronic Registration Systems, Inc. may rely on instructions from the servicer shown on the MERS® System in accordance with these Rules and the Procedures with respect to transfers of beneficial ownership, transfers of servicing rights, and releases of security interests applicable to such mortgage loan. The beneficial owner shall give any such contrary instructions to MERS and Mortgage Electronic Registration Systems, Inc. in writing and they may rely on such instructions until receipt of further written instructions from the beneficial owner.

*Section 7.* Each Member shall review for accuracy and completeness all information shown on the MERS® System with respect to mortgage loans and related transactions registered by such Member, and promptly update any incorrect information.

*Section 8.* Within ten (10) business days of receiving notice from the Member servicing the loan that the mortgage loan has been paid in full, MERS shall give notice to all Members shown on the MERS® System as having interests in such mortgage loan. The Member servicing the mortgage loan shall be responsible, at its own expense, to:

(a) take, or cause to be taken, appropriate action, including delivery to the appropriate recording office of an instrument of satisfaction or release (which may be signed by a certifying officer of Mortgage Electronic Registration Systems, Inc.), to



extinguish the lien of such mortgage in the proper manner within the applicable state imposed time frames, and register on the MERS® System the date of such action, or

(b) notify MERS that, in fact, the mortgage loan has not been paid in full.

If MERS is notified that a lien release has not been executed in compliance with applicable state imposed time frames, and the Member fails to take such action or give MERS notice that the mortgage loan has not been paid in full, then MERS reserves the right to release such mortgage. Such Member, upon demand, shall reimburse Mortgage Electronic Registration Systems, Inc. for its out-of-pocket costs in connection with release of the mortgage, including any penalties for failure to release the mortgage or take other action in a timely manner, and shall pay an administrative fee determined by Mortgage Electronic Registration Systems, Inc., and

(c) indemnify MERS and Mortgage Electronic Registration Systems, Inc. with respect to any liability which may arise as a result of the failure of such Member to take such action or give MERS such notice in a timely and accurate manner. Without limiting the generality of the foregoing, such indemnification shall extend to circumstances in which a mortgage is released by Mortgage Electronic Registration Systems, Inc., but the mortgage loan has not been paid in full, or in which such Member wrongfully refuses to authorize Mortgage Electronic Registration Systems, Inc. to release the mortgage.